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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,273	12/18/2001	Tamea Rae Sisco	123p-Real	5651
7590 08/04/2004 The Law Office of Craig W. Barber PO Box 16220 Golden, CO 80402-6004			EXAMINER WEBMAN, EDWARD J	
			ART UNIT 1617	PAPER NUMBER

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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10/025273

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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2/11/04

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 4/26/04

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-27, 29 is/are pending in the application.  
Of the above, claim(s) 28, 30-39 is/are withdrawn from consideration.  
☐ Claim(s) \_\_\_\_\_ is/are allowed.  
☒ Claim(s) 1-27, 29 is/are rejected.  
☐ Claim(s) \_\_\_\_\_ is/are objected to.  
☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892<sup>1</sup>  
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_  
☐ Interview Summary, PTO-413  
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948  
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Applicant's election of Group I comprising amino acids, vitamins and minerals in the reply filed on 4/25/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicants arguments regarding the elections over the amino acids, vitamins and minerals are moot in view of the amendments to claims 9, 16, and 21 deleting the Markush groups reciting the species.

Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 "efficient" is vague.

How is efficiency determined?

In claims 2, 7 "baffler" is indefinite.

Is "barrier" intended. In claim 10 "small" is vague; it is subjective.

In claim 12 "cellularly active" is vague; what activity is intended.

In claims 14, 15 the plural "forms" is vague; is the singular "form" intended?

In claim 19 "S" is indefinite; is "5" intended? In claims 22, 25 "suitable" is vague; what follows is not definitely claimed. In claim 27 "preferably" and what follows render the claim vague, it is unclear as to which range is definitely claimed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-19, 21-27, 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Winitz (US 3697287).

Wititz teaches a composition comprising three amino acids, three vitamins and four minerals (table III columns 9, 10). A mineral is sulfate form is specified (column 9 line 55).

Riboflavin phosphate is disclosed (column 10 line 49).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-27, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winitz in view of Iwagiri et al.

Winitz is described above.

Iwagiri et al disclose cobalamide in the liver<sup>✓</sup> and mecobalamin in the blood.

It would have been obvious to one of ordinary skill to add mecobalamin to the composition of Winitz to achieve the beneficial effect of <sup>VITAMIN B12</sup> ~~bitabin-biz~~ in the blood in view of Iwagiri et al.<sup>g</sup>

As to the claimed containers and introduction into saline, these are mere intended uses. As to the claimed properties regarding efficiency, such must be

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possessed by the anticipatory and obvious compositions, because they are the same as those claimed.

No claims allowed.

Any inquiry concerning this communication should be directed to Edward J.

Webman at telephone number 571-272-0633.

Webman/tgd

July 13, 2004

  
EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500